IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.36/2001

Mr. Vishwambar K. Salkar,
resident of Vasco-da-Gama,
(since deceased) represented by :
1(a) Smt. Laxmibai Vishwambar Salkar,
(b) Mr. Krishna Vishwambar Salkar,
(c) Mr. Ramakant Vishwambar Salkar,
(d) Miss Madhavi Vishwambar Salkar,
residents of Krishna Sadan,
Opp. St. Joseph Institute,
H.No. Nil, Vasco-da-Gama.

(e) Mrs. Manjusha Vinay Naik and her husband,
(f) Mr. Vinay Anant Naik,
Both residents of "Teerthroopa",
Narcinva Damodar Naik Marg,
Aquem, Margao, Goa. ..... Appellants.

V/s.

Shri Kamalakant Murari Tendulkar,
C/o. Uma Service Centre,
Vasco da Gama, Goa. ..... Respondent.

Shri S. G. Dessai, Senior Advocate with Mr. Shivan Dessai, Advocate for the appellants.

Shri Nikhil Vaze, Advocate for the respondent.

CORAM : P.V. KAKADE, J.

DATE : 7TH NOVEMBER, 2006.

ORAL JUDGMENT :

This is an appeal against the order passed by the Civil Judge, Sr. Division, Vasco da Gama, Goa setting aside the Award dated 7th August, 1992 in Arbitration Reference No.1 of 1991-92.

2. I have heard learned Counsel for both the parties. Perused the record.

3. The facts, in brief, in dispute, are thus :

The appellant-claimant late V.K. Salkar owned a petrol pump outlet of Hindustan Corporation Limited (earlier Esso). The said Salkar constituted a partnership of the petrol business with the respondent and his brother as partners and he and his wife as major partners as on 1.2.1983. On 1.3.1983, a retirement deed was executed whereby the said Salkar and his wife retired from the partnership for certain reasons and on conditions. Thereafter, a fresh partnership deed of M/s. Uma Service Centre was constituted with late V.K. Salkar as 51 % partner and the respondent as 49 % partner. The respondent was a working partner. This took place on 15.9.1986. The said partnership entered into an agreement in respect of the petrol pump business with M/s. Hindustan Petroleum Corporation. In the year 1991, disputes arose regarding the partnership business and

arbitration clause was invoked by late Salkar and the Arbitrator was appointed on 9.9.1991. The appointed Arbitrator was declared as the sole Arbitrator and commenced the arbitration proceedings. On 7th August, 1992, the Arbitrator made his ward, awarding an amount of Rs.1,57,064-82 in favour of Shri V.K. Salkar to which the respondent filed objections under Section 30 of the Arbitration Act, 1940, which was replied to by the appellant. On hearing both sides, the learned Civil Judge, Sr. Division, Vasco da Gama, passed the impugned order. Hence, the present appeal.

4. Now, the question for determination in this appeal is whether the impugned order is passed within the four corners of Section 30 of the Arbitration Act, 1940. Mr. Dessai, learned Counsel for the appellants vehemently urged that the lower Court has, in fact, reappreciated the entire evidence which was available before the Arbitrator while passing the award and has decided the application as if it was an appeal against the order of award which was not contemplated under Section 30 and, therefore, was liable to be struck down. On the other hand, it was submitted on behalf of the respondent that the case of the respondent was squarely within the provision of Section 30(a) of the said Act as the Arbitrator was guilty of 'legal misconduct' in the sense that he either ignored the documentary evidence on record or misread himself and came

to conclusions contrary to the available evidence.

5. In this regard, I must note that I have gone through the entire order passed by the lower Court as well as contents of the award. The contents of the award show that all the relevant aspects which were involved in the dispute were properly addressed to by the Arbitrator by raising relevant issues regarding findings on those issues on the basis of evidence before him. Be that as it may, the question is whether the lower Court while adjudicating the application under Section 30 of the Act, has exceeded his jurisdiction or not ? A plain reading of the order passed by the lower Court shows that the learned Judge has exceeded his jurisdiction in the sense that he has proceeded to reappreciate the evidence on record which, in my view, is not permissible under the provision of Section 30 of the said Act.

6. Section 30 of the said Act reads thus :

> **"30. Grounds for setting aside award. -** An award shall not be set aside except on one or more of the following grounds, namely -
>
> (a) that an arbitrator or umpire has misconducted himself or the proceedings;
>
> (b) that an award has been made after the issue of an order by the Court superseding the

arbitration or after arbitration proceedings have become invalid under Section 35;

(c) that an award has been improperly or is otherwise invalid."

So far as clause (b) of Section 30 is concerned, it is nobody's case that the arbitration is hit by the said provision. Similarly, provision of clause (c) also need not be invoked as it is the case of the respondent that the Arbitrator committed legal misconduct by ignoring or by not properly appreciating the evidence on record. However, as noted earlier, the case at hand appears to be contrary and the award is seen to be given on the basis of the available evidence on record.

7. Mr. Dessai also sought to rely on the ruling of the Apex Court in the case of ***State of Rajasthan vs. Puri Construction Co. Ltd., and anr.*** (1994) 6 SCC 485, wherein it was laid down that the award cannot be set aside merely on ground of misreading, misconstruction or misappropriation of material on record, nor can it be set aside merely because on court's own assessment, an alternative view is possible. Similarly in the case of ***Puri Construction Pvt. Ltd., vs. Union of India*** AIR 1989 SC 777, it is basically observed by the Apex Court that when a court is called upon to decide the objections raised by a party against an arbitration award, the jurisdiction of the Court is limited as expressly indicated in the Act, and it has no

jurisdiction to sit in appeal and examine the correctness of the award on merits. In the case at hand, this is what has happened while the civil court has proceeded to reappreciate the evidence sitting in appeal over the appeal under Section 30 of the said Act.

8. Therefore, without further elaboration, I hold that the learned Civil Judge has exceeded his jurisdiction while adjudicating the application under Section 30 of the said Act, while setting aside the award.

9. In the result, the appeal is, hereby, allowed. The order passed by the Civil Judge, Sr. Division, Vasco da Gama setting aside the award is, hereby, quashed and set aside. Consequently, the award is accepted. Rule is issued accordingly on the said award. With these directions, the appeal stands disposed of with no order as to costs.

P.V. KAKADE, J.

ssm.